

(2009) 09 MAD CK 0133

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No's. 4409 to 4414 of 2009 and M.P. (MD) No's. 1 of 2009 and 2 of 2009

Mujeeb Rahman and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision: Sept. 16, 2009

Acts Referred:

- Stamp Act, 1899 - Section 27
- Tamil Nadu Hill Areas (Preservation of Trees) Rules 1957 - Rule 10
- Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules, 1968 - Rule 3(1), 5
- Transfer of Property Act, 1882 - Section 11, 3, 55, 55(1), 8

Hon'ble Judges: R.S. Ramanathan, J

Bench: Single Bench

Advocate: V.R. Venkatesan, for the Appellant; K. Balasubramaniam, Additional Government Pleader for Respondents Nos. 1 to 6, M. Ajmal Khan, and T.A. Ebenasan, for 9th Respondent, for the Respondent

Final Decision: Dismissed

Judgement

R.S. Ramanathan, J.

Heard both sides.

2. In the above six writ petitions, common facts and law are involved and the respondents are also common in all the writ petitions and hence, with the consent of both parties, all the writ petitions were taken together for final disposal.

3. The properties in Survey Nos. 835/31 acres 1.29 cents, S. No. 784/143C- acre 11.52 cents, S. No. 835/15- acre 19.72 cents, S. No. 835/19 - acre 17.31 cents, S. No. 835/24- acre 121.29 cents, S. No. 836/2 - acre 21.33 cents, S. No. 641- acre 7.51 cents, S. No. 646- acre 5.64 cents, S. No. 774- acre 5.85 cents, S. No. 775- acre 8.74 cents, S. No. 784/8C- acre 13.01 cents, S. No. 784/8B acre 37.05 cents, S. No. 784/8D- acre 12.99

cents, S. No. 784/14D- acre 12.01 cents at Pandrimalai and in Manalur village in S. No. 195/2- acre 3.98 cents, S. No. 200-acre 1.39 cents, of a total extent of 336.37 acres situate at Pandrimalai and in Manalur village belonged to the 9th respondent.

4. It is admitted that the properties are estate lands with trees and the petitioners, in all the cases, entered into an agreement of sale with the original owner viz., the 9th respondent, for the sale of lands, by agreement, dated 30.08.2008 and as per the agreement of sale, 339 acres situate in various survey Numbers mentioned above, were agreed to be sold for valid consideration of Rs. 50,000/- per acre and as per the agreement, the petitioners have also agreed to purchase the properties for the said purchase price, immediately free from all encumbrance. Therefore, supplementary agreement has been entered into between the petitioners and the 9th respondent, dated 27.11.2008 and thereafter, a registered sale deed was also executed by the 9th respondent in favour of the petitioners on 09.03.2009 conveying various items of properties stated therein.

5. According to the petitioners, they have purchased not only the lands, but also the trees grown on that lands. It is the further case of the petitioners that later they came to know on 16.06.2008 that the 9th respondent had entered into an agreement with the 7th respondent for the sale of trees in respect of trees grown in Survey Nos. 835/24 and 836/2 and on 15.07.2008, the 9th respondent also gave a registered power of attorney in favour of the 8th respondent, authorising him to cut the trees grown on those lands and apply for getting necessary permits from the respondents 2 and 3 and without disclosing the earlier agreement of sale entered into by the 9th respondent with the 7th respondent, a sale deed was executed by the 9th respondent in favour of the petitioners.

6. Further, the 7th respondent applied for the grant of permits from the respondents 1 and 2 for cutting the trees, in pursuance to the agreement and on 04.02.2009, an order was issued by the first respondent in favour of the 8th respondent, who is the power agent of the 7th respondent and on 02.03.2009, an order was passed by the 2nd respondent in respect of trees grown in Survey No. 836/2 and 835/24 respectively. According to the petitioners, as per the sale deed, dated 09.03.2009, the petitioners became the absolute owners of the landed properties, which includes trees and therefore, the respondents 7 and 8 have no right to cut and remove the trees as per the agreement of sale entered into with the 9th respondent. On coming to know of the cutting order given by the respondents 1 and 2, the petitioners preferred an appeal before the District Collector/ 1st respondent and before the 2nd respondent under Rule 10 of the Tamil Nadu Hill Areas (Prevention of Trees) Rules 1957 and a show cause notice was given by the 2nd respondent to the 7th respondent why the cutting order should not be cancelled and thereafter, no action has been taken by the respondents 1 and 2.

7. It is further stated in the affidavit that the 7th respondent filed a suit O.S. No. 100 of 2009 on the file of the Sub Court, Dindigul, against the 9th respondent and Thiru.

Mujeeb Rahman, who is the petitioner in W.P.(MD)Nos.4409 & 4412 of 2009, restraining them, preventing the plaintiff in that, suit from cutting and removing the trees from the suit properties, as per the agreement, dated 16.06.2008 and in that suit, all the petitioners herein, were not parties, except the petitioner in W.P.(MD)Nos.4409 & 4412 of 2009 and an injunction order was granted by the Sub Court, Dindigul and that was under challenge in C.M.A. No. 1 of 2009, on the file of the District Court, Dindigul and the same is pending before the District Court, Dindigul. As the petitioners have purchased the properties in pursuance to the agreement of sale, dated 30.08.2008 and 27.11.2008, the petitioners have become the owners of the properties, which includes the trees grown on that properties and therefore, the 7th respondent, by suppressing the agreement of sale, got the cutting order issued by the respondents 1 and 2 on 04.02.2009 and 02.03.2009 and as the 7th respondent has suppressed the material facts about the agreement of sale and subsequent sale deed, the respondents 1 and 2 are having power to cancel the permission and though a show cause notice has been given by the 2nd respondent, no further action has been taken and in these circumstance, the petitioners filed the above writ petitions, directing respondents 1 and 2 to invoke the Rule 10 of the Tamil Nadu Hill Areas (Preservation of Trees) Rules 1957 and to cancel the cutting order, dated 04.02.2009 issued by the 1st respondent and the order, dated 02.03.2009 issued by the 2nd respondent.

8. The respondents 7 and 8 have filed the counter affidavit stating that the 7th respondent entered into an agreement of sale for cutting all the trees found in Survey Nos. 835/24 and 836/2, of an extent of 142 acres and a registered power of attorney was given by the 9th respondent in favour of the 8th respondent, directing the 8th respondent to cut and remove the trees and to apply for necessary permission from the respondents 1 and 2 for cutting the trees and on the basis of the agreement of general power, the 8th respondent has applied for permit on 06.08.2008 seeking permission from the respondents 1 and 2 and permission was granted on 04.02.2009 and 02.03.2009, much before the sale deeds were executed in favour of the petitioners by the 9th respondent and therefore, the petitioners have no right to question the right of the respondents 7 and 8 to cut and remove the trees and as the respondents 7 and 8 took steps to cut and remove the trees, the petitioner in W.P.(MD)No.4412 of 2009 prevented them and hence, the CMA was filed in CMA. No. 1 of 2009 and that is pending before the District Court, Dindigul and the petitioners have no right to challenge the order of the respondents 1 and 2 and if they are aggrieved by the order of the respondents, they will have to establish their right, by filing necessary suits, in the civil courts and they have no right to seek the writ of mandamus as prayed for in these writ petitions.

9. The learned Counsel appearing for the petitioner Mr. V.R. Venkatesan, contended that admittedly, the respondents 7 and 8 have not cut and remove the trees as per the agreement, dated 16.06.2008. By virtue of the sale deed, dated 09.03.2009, the landed properties were sold to the petitioners by the 9th respondent and under

those sale deeds not only the lands but also the trees, which are attached to earth are also presumed to have been sold to the petitioners and hence, the 7th respondent cannot claim any right over the trees, by virtue of the agreement of sale in his favour, in respect of trees, having regard to the fact that the lands were sold before the trees were cut down by the respondents 7 and 8.

10. Mr. V.R. Venkatesan, the learned Counsel appearing for the petitioners further submitted that as per Section 8 of the Transfer of Property Act, Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth.

11. Further as per interpretation Clause 3 of the said Act, " attached to the earth" means- (a) rooted in the earth, as in the case of trees and shrubs; b. imbedded in the earth, as in the case of walls or buildings; or c. attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached.

Therefore, contended that after the execution of the sale deed in their favour, the title to the trees also transferred to them and hence, the respondents 7 and 8 cannot claim any right over the trees. Therefore, he contended that the respondents 1 and 2 should not have issued the impugned orders in favour of the respondents 7 and 9 as they have no right to the trees.

12. Mr. V.R. Venkatesan, the learned Counsel appearing for the petitioners also relied upon the judgment of the Honourable Supreme Court reported in 1968 AIR 612, in the case of Divisional Forest Officer, Sarahan Forest Division of Simla Forest Circle, Himachal Pradesh and Anr. v. Daut and Ors., wherein it has been stated in para 6, there can be no doubt that trees are capable of being transferred apart from land, and if a person transfer trees or gives a right to a person to cut trees and remove them it cannot be said that he has transferred land. But we are concerned with a different question and the question is whether u/s 11 of the Act trees are included within the expression "right", title and interest of the land-owner in the land of the tenancy". It seems to us that this expression "right, title and interest of the landowner in the land" is wide enough to include trees standing on the land. It is clear that under Section 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on it. It seems to us that we should construe Section 11 in the same manner. and also relied upon the judgment reported in [Vishwa Nath and others Vs. Ramraj and others](#) , wherein it has been held that there may be a presumption that when land is transferred, all things attached to the earth, such as trees and shrubs, are also transferred along with the land in view of the provisions of Section 8 read with

Section 3 of the Transfer of Property Act, 1882. But there can be no presumption in a case vice versa.

13. On the other-hand, Mr. Ajmal Khan, the learned Counsel appearing for the respondents 7 and 8 contended that after the agreement of sale entered into, by the 9th respondent with the 7th respondent, the 9th respondent ceased to be the owner of the trees and hence, what has been conveyed by the 9th respondent to the petitioners are the landed properties alone without trees as the trees have already been sold to the 7th respondent.

14. He further submitted that immediately after the agreement of sale and the general power of attorney, executed by the 9th respondent, the respondents 7 and 8 applied for permit on 06.08.2008 and after conducting various enquiries and obtaining reports from the various officers, orders were passed on 04.02.2009 and 02.03.2009 by the 2nd and 3rd respondents for cutting the trees and hence, there is no infirmity in the cutting order passed. Further, on the date of passing of the cutting order, the sale deeds were not executed by the 9th respondent in favour of the petitioners and an agreement of sale in respect of the immovable properties does not create any interest in the immovable properties and hence, on 04.02.2009 and 02.03.2009, the petitioners have no right over the trees even assuming that under that sale deeds trees were also conveyed to the petitioners. Therefore, he contended that on the date of passing of cutting order, the 7th respondent was the lawful owner of the trees, by virtue of agreement of sale and hence, the cutting orders cannot be challenged.

15. He further brought to my notice, the various provisions of the Tamil Nadu Hill Areas (Preservation of Trees) Rules 1957. As per Section 3 of the said Act, no person shall be cut or fall or remove any tree except as per rule framed in that act and under Rule 10 permission granted can be cancelled or modified if the committee has reason to believe that any person to whom permission was granted furnished the particulars which are materially incorrect or has contravened any provisions of these rules or the conditions subject to which permission was granted. As the respondents 7 and 8 did not contravene any of the rules or have not suppressed any material particulars, the permission cannot be cancelled or modified.

16. Mr. M. Ajmahl Khan, the learned Counsel appearing for the respondents 7 and 8 also brought to my notice the recitals in the agreement, dated 27.11.2008 between the 9th respondent and the petitioners, wherein it has been stated that the possession has been handed over for limited purpose of residing and to do the work of removing the shrubs in the estate and Mr. Mujeeb Rahman, who is the agreement holder or his servants were not permitted to cut the valuable trees from the estate. Relying on that passage in that agreement, Mr. M. Ajmal Khan, the learned Counsel appearing for the respondents 7 and 8 submitted that it has been specifically provided that trees should be cut only by the petitioners as per the agreement and therefore, what has been sold to the petitioners is actually the lands

and not trees, and in any event, as the 7th respondent has purchased the trees and entered into agreement, he is entitled to remove the trees and the subsequent sale deed in favour of the petitioners will not have the effect of preventing the 7th respondent from cutting the trees.

17. Before going into the power of the respondents 1 and 2 to cancel or modify the cutting order, we will have to see what is the effect of the sale deeds in favour of the petitioners and whether under the sale deeds, the trees were also conveyed along with the lands, by virtue of Section 8 of the Transfer of Property Act, and if so, will it prevent the 7th respondent from cutting the trees.

18. No doubt u/s 8 of the Transfer of Property Act, Unless the different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof, which includes all place attached to the earth. Therefore, as per the above section, under a transfer of property, all the interest, which the transferor is then capable of passing in the property will be transferred.

19. As rightly contended by Mr. M. Ajmal Khan, the learned Counsel appearing for the respondents 7 and 8 that earlier to the date of the sale deed, the 7th respondent had entered into an agreement of sale for cutting of trees in two survey numbers and therefore, while executing the sale deed the transferor has no right to convey the trees, as he had already sold to the 7th respondent and he was not capable of transferring the trees on 09.03.2009. Therefore, it was contended by the learned Counsel appearing for the respondents 7 and 8, Mr. M. Ajmal Khan, that under the sale deed, the trees could not have been transferred.

20. To appreciate the contention of Mr. M. Ajmal Khan, the learned Counsel appearing for the respondents 7 and 8, we will have to ascertain whether under the sale deed, dated 09.03.2009, the 9th respondent sold the lands as well as the trees to the petitioners. Though the petitioners entered into an agreement of sale deeds, dated 30.08.2008 and 27.11.2008, under those agreements, they cannot claim any interest in the immovable properties and if at all they can claim any interest in the immovable properties they can do so only under the sale deed, dated 09.03.2009.

21. In a case where the vendor purports to have sold the entire properties but actually there is some deficiencies either in respect of area or estate or right, the rights of the purchaser, has been stated by Darts in his book- "On vendors and purchasers" (8th edition) Vol. I, page 565 as follows: "The purchaser will be entitled to compensation for a deficiency in quantity even though the estate is not sold professedly by measurement".

In Williams on Vendor and Purchaser (4th Edition page 725 it is stated as follows:

The purchaser therefore, is as a rule entitled if it turns that there is a mere deficiency whether of area, estate or right and whether substantial or not between the property described in the contract and that offered in fulfilment, thereof to enforce the specific performance of the contract, taking such interest in the property sold as the vendor has and receiving compensation for the deficiency. For example where a vendor described the land sold as containing a much greater quantity than its actual area, he was obliged at the purchaser's suit to convey what estate he had and to allow compensation for the deficiency.

22. Further in Halsbury's Laws of England Vol.29, paragraph 669, is as follows: "After completion of the contract, the transaction is at an end as between vendor and purchaser and as a general rule, no action either at law or in equity can be maintained by either party against the other for damages or compensation on account of errors as to quantity or quality of the property sold unless such error amounts to a breach of some contract, or warranty contained in the conveyance itself, or unless some fraud has been practised by the purchaser."

23. The above passages were discussed in the judgment reported in 1951(2) MLJ 611 in the case of M. Delli Gramani and Anr. v. C.R. Ramachandran and in that case it has been held that in the absence of fraud on the part of the vendor in case of deficiency of property conveyed under the sale deed and where specific boundaries were given the purchaser has no right to claim compensation.

24. Further as per Section 55 of the Transfer of Property Act, the rights and liabilities of buyers and seller have been stated and as per Section 55(1)(a) the seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto, of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover:

25. Further, it is stated in the said section that any omission to make such disclosures as are mentioned u/s para 1 Clause (a) and para (5) Clause (5) is fraudulent. As per Section 55(1)(a) when the seller did not disclose any material defect in the property which buyer is not aware of and could not with ordinary care discover, the same can be treated as fraudulent one.

26. In this case, according to the learned Counsel appearing for the petitioners, Mr. V.R. Venkatesan, they are not aware of the agreement of sale in respect of the trees entered into between the 9th respondent and the 7th respondent and had they known the same, they would not have entered into the sale transactions by paying huge consideration and hence, fraud has been committed on them.

27. Though, it is not necessary for me, to go into the aspect of fraud alleged to have been committed on the petitioners by the 9th respondent, having regard to limited purpose of arriving at a decision, whether the petitioners are entitled to relief prayed for on the ground that the permits were obtained by suppressing the material particulars by the 7th respondent, I have to give a finding what is the

nature of property that was conveyed under the sale deed, dated 09.03.2009 and whether it includes the trees also .

28. Admittedly, in the sale deed, there is no mention about the trees. As contended by the learned Counsel appearing for the petitioners, trees attached to the earth are also immovable properties and hence, they ought to have been mentioned as they have their own value. u/s 27 of the Indian Stamp Act -

The consideration and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

29. Admittedly, the trees have got potential values and therefore, while executing the sale deeds, if the trees are also conveyed, it must have been mentioned and value of the trees must have been stated in the instrument of sale.

30. It is further evident by Rule 3(1) of the Tamil Nadu Stamp (Prevention of Under valuation of Instruments) Rules 1968, wherein it has been stated that in any instrument, number of items of property, the market value of each of the items shall be specified separately.

31. Rule 5 deals with the principles of determination of market value and as a matter of fact in the sale deed dated 09.03.2009 declaration has been made by the 9th respondent about the nature of properties, which were sold and a perusal of that statement given under Rule 3(1) of the Tamil Nadu Stamp (Prevention of Under valuation of Instruments) Rules 1968, would make it clear that, market value was arrived at only for the lands and no value has been fixed for the trees grown on the lands.

32. Thus, it is made clear that under the sale deed, dated.09.03.2009, only the lands were sold. This is fortified by the fact that even on 16.06.2008, the 9th respondent has sold the right of cutting trees in favour of the 7th respondent.

33. Further the 9th respondent has executed a registered power of attorney in favour of the 8th respondent on 15.07.2008, wherein it has been specifically stated that the power has been given for cutting trees marked and to get necessary permission from the respondents 1 and 2. Therefore, if the petitioners are prudent persons they would have applied for encumbrance, while ascertaining the right of the 9th respondent to convey the property and they would have found out that already the trees were sold. Therefore, from these facts, prima facie it is made clear that what has been sold under the sale deeds and only the lands not trees.

34. Further, even admitting the case of the petitioners that they have purchased the properties on the basis of representation given by the 9th respondent that along with the lands, trees were also conveyed and later they came to know that even earlier to that, the trees were sold by the 9th respondent to the 7th respondent, it can be inferred that fraud has been committed on the petitioners by the 9th

respondent by making false representation without disclosing the earlier agreement of sale of trees and in that event, the petitioners are only entitled to file the suit for damages and they have no right to challenge the cutting orders granted by the respondents 1 and 2.

35. According to me, under Rule 10 of the Tamil Nadu Hills (Preservation of Trees) 1957, permission can be cancelled only when the person whom permission was granted and gave a materially incorrect or has contravened any provisions of these rules the conditions subject to which the permission was granted and in this case, it cannot be stated that the respondents 7 and 8 have suppressed the particulars, while obtaining the permission or violated any condition subject to the permission was granted. Hence, the permission orders issued by the respondents 1 and 2 in favour of the respondents 7 and 8 cannot be challenged by the petitioners. If the petitioners are aggrieved by the facts that the 9th respondent has committed fraud on them, it is always open to them to file necessary suits claiming compensation and if any suit is filed, the suit without being influenced any of the observations made in these writ petition, the same shall be disposed on the basis of the evidence and pleadings by the learned Judge.

36. In the result, these writ petitions are dismissed. However, it was represented by Mr. M. Ajmal Khan, the learned Counsel appearing for the respondents 7 and 8 that they are not able to cut and remove the trees by reason of the injunction order passed in these writ petitions and the cutting orders permitted the respondents 7 and 8 to cut and remove the trees only upto 07.09.2009 and in the event of the writ petitions are dismissed, direction may be issued to the respondents 2 and 3 to extend the period to enable the respondents 7 and 8 to cut and remove the above trees.

37. As the writ petitions are dismissed, the respondents 2 and 3 are directed to grant sufficient time to the respondents 7 and 8 to cut and remove the trees, as per the cutting orders, dated 04.02.2009 and 02.03.2009 issued by the respondents 2 and 3 respectively, in favour of the respondents 7 and 8. Consequently, connected Miscellaneous Petitions are also dismissed. No costs.